Supreme Court, U.S.
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No. 92-95

In the
Supreme Court of the United States

OCTOBER TERM, 1992

LEO POCCHIARI,
PETITIONER,

v.

BOARD OF REGENTS, ET AL.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO RHODE ISLAND STATE SUPREME COURT.

PETITIONER'S REPLY BRIEF IN OPPOSITION.

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Reply to Brief of Opposition.

This is a reply to the respondent's brief in which the petitioner would like to clarify and dispute several points.

Opposing counsel states that defendant, Dr. Troy Earhart, Commissioner of Education (now retired) did not need to be present at the trial in Superior Court (4/25/90). The fact is that Dr. Earhart was duly serviced by the Court and was the spokesman for the Board of Regents at the time. Dr. Earhart chose

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not to appear in Court. As a consequence, Mr. Peter Blackwell, Principal of the Rhode Island School for the Deaf, was asked to appear in his stead. Clearly, Mr. Blackwell, as School Principal, lacked the legal standing to speak for the Board of Regents. Therefore, in view of the fact Dr. Earhart elected to boycott the trial, it can justly be considered an "ex parte" trial.

On the matter of discovery, the defendant constantly refused to release numerous documents germane to this case. Many formal complaints were filed with the defendant and in Motion Court. This is a matter of record and not a matter of opinion. Therefore, the petitioner was denied the opportunity to fully prepare for trial.

It is also noteworthy that opposing counsel claims that docket number 92-95 was not used on his Brief of Opposition because Petitioner did not forward it to him. This assertion is completely without foundation as notice of docket number and Supreme Court appearance form were mailed to opposing counsel under a proof of mailing on July 20, 1992.

The petitioner would like to point out that the opposing counsel neglected to comment on two other matters in his Brief of Opposition:

(1) The petitioner was denied the opportunity to take the witness stand and testify in his own behalf nor was he permitted to call any witnesses to testify.

(2) The petitioner was also denied the opportunity to submit any documentary evidence in his behalf.

The petitioner was a member of the American Federation of Teachers, Rhode Island Federation of Teachers, Local 2012. During the petitioner's tenure at The School for the Deaf, all of the alleged misconduct of the School Administration were reported to the Union who did virtually nothing except to go through the motion, at times. It was clear to the petitioner that it would be left to him to seek a solution. As a result, the peti-

tioner opted to proceed on his own under article 12.2(e) of the Union Contract which states:

> "Nothing contained herein deprives an individual employee of the right to process his/her grievance under this Article without Union representation. If such grievance is processed without Union representation, the facts of said grievance will be furnished ot the Union"

The petitioner decided to take the matter into court rather than into arbitration for two reasons: (1) The union contract is silent as to whether a dispute should be taken into Court or into arbitration and, (2) There was a series of statutes that were broken which necessitated taking the case into Court rather than arbitration. (These are outlined in the Petitioner's Writ of Certiorari).

One of the laws violated by the School Administration, however, was the Teacher Certification Act (R.I. General Law 16-11-1) wherein the petitioner, who is a licensed audiologist, was forced to teach deaf and handicapped children 22 periods a week for one year. This occurred from early September 1981 to mid-June, 1982. This particular matter was reported to the Union many times. On September 21, 1981, the following note was received from the Grievance Chairman, Ray Velino:

> "I have contacted Edward Casey, Executive Secretary, RIFT, with regard to your request that contempt charges should be filed against the Board of Regents, and the management of the Department and the School for the Deaf, Mr. Casey contacted Richard A. Skolnik, Esq. to secure his legal opinion as to the possibility of

filing a contempt charge. It is Mr. Skolnik's legal opinion that there are no grounds for such action. I anticipate that this closes this matter."

Conclusion.

It is evident to the petitioner that he had a right to handle his own case and in view of the various laws that were broken, that the case was properly referred to a Court of law.

It is also clear to the petitioner that this was an "ex parte" trial and that his constitutional right to a fair trial was violated in a variety of ways.

As Government becomes more and more omnipresent in society, it is not unusual for it to subvert the rights of the average citizen, especially since the average person lacks the capacity to successfully challenge big government. The present case is one person's effort to reverse that trend and to protect individual rights which are guaranteed by the United States Constitution as well as the Rhode Island Constitution.

Respectfully submitted,

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August 20, 1992